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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROBERT P. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Real Party in Interest.

D060953

(San Diego County  
Super. Ct. No. SJ12371)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section 366.26 hearing. Ronald F. Frazier, Judge. Petition denied. Request for stay denied.

Robert P.<sup>1</sup> and N.T. (together the parents) contend the juvenile court erred when it set a hearing under Welfare and Institutions Code<sup>2</sup> section 366.26 to select and implement a permanency plan for their son, R.P. The parents contend the evidence is insufficient to support the finding that return to N.T.'s custody would be detrimental to R.P.'s safety, protection, or physical or emotional well-being. We deny the petition.

#### FACTUAL AND PROCEDURAL BACKGROUND

Robert P. and N.T. are the unmarried parents of R.P. They met while they were hospitalized for treatment of paranoid schizophrenia. After suffering a miscarriage, N.T. discontinued her medications to have a baby. R.P. was born healthy in November 2007. Robert and N.T. maintained a relationship but did not live together.

In May 2010, after not being able to contact N.T. for several days, R.P.'s maternal aunt found her at home in a "zombie like" state. N.T. told her she could not answer the telephone because of the government. She said she wanted to commit suicide by starvation. The home was in shambles. R.P. was extremely dirty and hungry.

N.T. was hospitalized due to her psychotic condition. She said voices had been telling her to starve herself and R.P., and he would die slowly from starvation. After a two-week hospital stay, N.T. stabilized on medications and was released. She denied

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<sup>1</sup> Robert joins with the arguments raised by N.T. in her petition. He does not raise any arguments on his own behalf.

<sup>2</sup> Statutory references are to the Welfare and Institutions Code unless otherwise specified.

trying to starve herself or R.P., and said she would never do anything to hurt or harm her child.

When the social worker interviewed Robert, he presented as completely incapacitated and disoriented. He was unable to understand who the social worker was. Family members reported that Robert was unable to care for himself.

The San Diego County Health and Human Services Agency (Agency) filed a petition under section 300, subdivision (b), on behalf of R.P., and detained him in protective custody. The petition alleged N.T. and Robert were not able to provide regular care for R.P. because of their mental health diagnoses of paranoid schizophrenia. The juvenile court appointed a guardian ad litem for Robert.

In August 2010, the juvenile court sustained the petition and ordered Robert and N.T. to undergo psychological evaluations. Robert had a 30-year history of paranoid schizophrenia. He was noncompliant with medications and depended on family members to care for him. At the time of the evaluation, Robert did not know who or where he was. The psychologist stated Robert's behavior was influenced by delusions and hallucinations, and his communication and judgment were seriously impaired.

N.T. was diagnosed with schizoaffective disorder, bipolar type, and brief psychotic episode, with marked stressors. The psychologist stated that at the time of her psychological evaluation, N.T. did not present with a mental disability that would render her unable to care for her child. She appeared to be emotionally stable, without psychotic symptomatology. The psychologist believed that N.T. was able to utilize reunification services and benefit from those services within a 12-month period, provided she continue

with appropriate medical treatment. The psychologist also stated N.T.'s history suggested if she were under stress, N.T. may experience psychotic episodes with suicidal ideation, jeopardizing R.P.'s safety.

The court ordered a plan of reunification services for N.T. The court also ordered reunification services for Robert, pending a second psychological evaluation to determine whether he would be able to benefit from services.

Robert underwent a second psychological evaluation. The psychologist said Robert was "basically psychotic" unless medicated, and was totally unable to parent his child at that time or in the foreseeable future due to his severe mental disorder and noncompliance with prescription medication.

Robert was committed under section 5150 from November 8 to 19, and from December 1 to 10, 2010. In November Robert was delusional and disoriented; he had been throwing rocks at a streetlight, yelling at his elderly mother in a threatening manner and refusing to eat. He was discharged with medication. In December Robert hit his brother and broke objects in the family home. Robert's mental health condition was diagnosed as Paranoid Schizophrenia with acute exacerbation. He was again discharged with medication.

On January 6 and 11, 2011, N.T. brought Robert with her to visit R.P. Throughout the visits, Robert talked to himself, rocked back and forth, and did not engage with R.P. On January 20 N.T. told the social worker she was taking Robert to a parenting class. When the social worker voiced concerns about Robert's mental health condition, N.T. said Robert was stabilized on medication and asked the social worker to "give him a

chance." A few days later, N.T. told the social worker Robert was not paranoid even if it appeared that way to other people.

The social worker met with Robert on January 24. When she asked him about his medication, Robert replied, "The baby's doing fine. He's not penalized. There's a translator." He then gave the social worker a document unrelated to the juvenile court proceedings and said, "I'd hold. There's an Indian forelord with a high percentage."

On January 27, the social worker again spoke to N.T. of her concerns about Robert's aggressive behaviors against his mother and brother, and advised her that having Robert present at visits presented a risk to R.P.'s safety. N.T. disagreed with the social worker's assessment, saying Robert would never hurt his son. The social worker told N.T. that she would seek a no contact order at a juvenile court hearing on January 31.

N.T. brought Robert with her to visit R.P. on January 31. On the same day, the juvenile court issued a temporary order restraining Robert from having contact with R.P. The order also stated N.T. was not permitted to bring Robert to her visits with R.P.

The social worker informed N.T. about the temporary restraining order and a pending contested hearing on the order on February 24. N.T. said it was not in R.P.'s best interests not to have contact with his father because Robert was a gentle person and R.P. needed him. N.T. said she understood the court's order and would comply with it.

In April the court terminated Robert's reunification services. In May the court entered a no contact order between Robert and R.P.

N.T. regularly visited R.P. and participated in her case plan. She remained stable on her medication. N.T. was very loving and appropriate with R.P. but was afraid to set

limits with him to avoid a tantrum. If angry, R.P. would hit N.T. or pull hard on her clothing. She was unable to redirect him, set limits, provide consequences for his behaviors or discipline him appropriately. N.T. deferred to R.P.'s wishes and allowed him to direct the visits. To assist N.T. in implementing limits, the Agency referred her and R.P. for Child Parent Psychotherapy (CPP).

By the time of the 12-month hearing, the Agency reported that N.T. had participated in nearly every service available to her through the Agency, including individual therapy, parenting education, day treatment program for persons with chronic mental illness, medication management and CPP. During the past six months, N.T. had implemented the same routine for all visits. She fed R.P. the same items, cradled him for extended periods of time and spoke to him about matters he was too young to understand. She did not allow any deviations from the visitation routine. The social worker stated N.T.'s rigid parenting posed a great risk to R.P., and did not allow her to meet any challenges that might test her ability to parent outside her established routine.

The 12-month hearing was originally scheduled for July 20, 2011, but was continued for various reasons to November 2 and 18. The court admitted the Agency's reports in evidence and heard testimony from the social worker, her supervisor, the foster mother and N.T.

The Agency recommended the court terminate N.T.'s reunification services and set a section 366.26 hearing to allow R.P.'s adoption by his current foster parents. The social worker believed it would be detrimental to return R.P. to N.T.'s care. N.T. had an

enmeshed relationship with Robert, and did not believe that he presented a safety risk to R.P.

The social worker testified N.T. did not demonstrate an emphatic understanding of R.P.'s needs. N.T. established a highly structured routine for visits and did not deviate from her routine. She discouraged R.P. from engaging in other activities, infantilized him and spoke to him about subjects too advanced for his age. She was unable to set limits for R.P. and instead exhibited rigidity in her parenting routine. The social worker said N.T. was unequipped to handle R.P.'s behaviors. She could not set appropriate boundaries for R.P., or discipline him, and she was aloof to conditions that presented safety hazards to him. During longer visits in which R.P.'s behavior problems became more apparent, the social worker had to intervene numerous times because N.T. could not control his behaviors.

The social worker's supervisor testified that N.T.'s treatment of R.P. showed she was not attuned to the role of parenting a three-year old. Despite participating in PPC, the visits were relatively unchanged since April 2010. The supervisor did not see any indication N.T. could handle novel situations effectively, and was concerned about N.T.'s ability to apply parenting skills in non-structured circumstances.

N.T. testified she brought a bean and cheese burrito to R.P. at every visit as a family ritual. She also brought juice, apples, raisins and oranges. She held R.P. at the beginning of every visit because he asked her to hold him. The time she spent holding R.P. varied. If he wanted to play, then they played. N.T. said she had a support system and was able to care for R.P.

N.T. said she saw Robert every day at their day program. They participated in a group program. They had not been in a relationship for several months. N.T. knew Robert was not supposed to see R.P., and he had not seen him. When asked whether she ended the relationship because she believed Robert posed a risk to R.P.'s safety, N.T. replied, "I ended the relationship because we both decided my son needs to come home. He only needs to be around his mother and father. And . . . to be back with at least his mother is the most important thing."

The juvenile court said it reviewed the entire case file and found numerous instances where N.T. was unwilling to comply with the no contact order, and her continued relationship with Robert would expose R.P. to a substantial risk of physical and emotional detriment. The court terminated reunification services and set a section 366.26 hearing for March 12, 2012.

N.T. and Robert petition for review of the court's orders and request a stay of the section 366.26 hearing. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) They ask this court to vacate the order setting a section 366.26 hearing and order the juvenile court to return R.P. to her custody. This court issued an order to show cause and the Agency responded. The parties waived oral argument.

## DISCUSSION

N.T. contends there is insufficient evidence to support the juvenile court's finding return to her custody would create a substantial risk of detriment to R.P.'s physical or emotional well-being. She argues the evidence showing she had an ongoing relationship with Robert and supported his relationship with R.P. does not establish there was a risk to



R.P.'s safety in her care. N.T. states the record shows she did not violate any order prohibiting Robert from having contact with R.P., and there was no evidence to support the juvenile court's finding she would violate the no contact order if R.P. was returned to her care. She further asserts the criticisms about her parenting skills do not constitute substantial evidence of detriment.

At the 12-month review hearing, the court must return the child to the physical custody of his or her parent unless the Agency proves, by a preponderance of the evidence, that return to the parent would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child (detriment finding). (§ 366.21, subd. (f); see *In re Marilyn H.* (1993) 5 Cal.4th 295, 308; *In re Jasmon O.* (1994) 8 Cal.4th 398, 420.) The failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs is prima facie evidence that return would be detrimental to the child. (§ 366.21, subd. (f).) At a review hearing, the focus is on the child's well-being, rather than on the initial grounds for juvenile court intervention. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.)

The reviewing court must affirm an order setting a section 366.26 hearing if it is supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.) "When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874; *Elijah R. v. Superior Court*

(1998) 66 Cal.App.4th 965, 969.) The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Contrary to the juvenile court's finding there were "numerous instances" where N.T. was unwilling to comply with the no contact order, we do not find any indication in the record to show that N.T. was unwilling to comply with any order prohibiting Robert from having contact with R.P.<sup>3</sup> Instead, the record shows that *after* N.T. was informed of the restraining order on January 31, she said she did not agree with the order but would comply with it. There is no evidence in the record to show she then attempted to facilitate, or facilitated, contact between Robert and R.P.<sup>4</sup> While N.T. expressed her belief throughout the case that Robert did not present a risk to R.P., there is no evidence to show she attempted to violate, or violated, any no contact order.

However, the appellate court reviews the judgment of the juvenile court, not its rationale. As a general rule, if the result reached below was correct on any theory of the law applicable to the case, the judgment must be sustained regardless of the considerations which may have moved the trial court to its conclusion. (*People v.*

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<sup>3</sup> Until January 31, 2011, an order for liberal supervised visits between Robert and R.P. was in effect.

<sup>4</sup> The record shows N.T. was not present in court on January 31. At some point that day, the social worker informed N.T. the court had issued a temporary restraining order. N.T. was present in court on February 4 when the court reissued the temporary restraining order and admonished her not to take Robert with her to visits.

*Smithey* (2006) 20 Cal.4th 936, 972; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) As we discuss below, N.T.'s insistence that it would benefit R.P. to maintain a relationship with Robert, who was psychotic, and the social worker's observations about her rigid parenting skills constitute substantial evidence of her inability to properly assess R.P.'s needs.

The record shows that throughout the 18-month long dependency proceedings, the Agency continually assessed N.T.'s ability to safely parent R.P. The Agency determined it could not implement unsupervised visitation because the risk to R.P. was too great. Outside a highly structured environment, N.T. could not set limits or boundaries with R.P. He often dictated what food and toys he wanted N.T. to bring to visits. N.T. followed his commands to avoid dealing with his behavior problems rather than implementing age-appropriate discipline or redirection. The social worker observed a reversal of the parent/child relationship. The foster father reported that N.T. treated R.P. as an equal.

According to her therapist, N.T. lacked the ability to apply specific parenting techniques outside an established routine. The therapist said N.T. did not fully understand R.P.'s age-appropriate cognitive, emotional, developmental and physical needs. A developmental specialist said N.T. lacked "common sense" in her role as a caregiver. The social worker and foster parent said N.T. did not consistently recognize safety risks to R.P. For example, she boosted three-year R.P. up on monkey bars that were approximately six feet from the ground, and did not closely supervise him while he swung upside down from his knees. On another occasion she allowed him to climb

outside safety bars on a high structure and did not redirect him. N.T. dismissed concerns about R.P.'s safety, stating that he was a "very capable climber."

The social worker stated that although N.T.'s mental health condition had improved, the rigid aspects of her personality limited her ability to adequately parent and protect R.P. in a manner consistent with his developmental and emotional needs. She was unable to recognize how Robert's severe mental illness limited his ability to be a parent to R.P. Her insistence that R.P. needed his father indicated she did not appreciate the severity of Robert's mental health condition and the risks Robert's psychotic behaviors presented to R.P. Further, the social worker believed that N.T.'s mental health condition was a complicating factor in any decision to return R.P. to her care. The evaluating psychologist said N.T. had a history of experiencing psychotic episodes with suicidal ideation when under stress, which would jeopardize R.P.'s safety. Although N.T. had stabilized her mental health condition, the record permits the reasonable inference that any decompensation in her mental health would present a serious safety risk to R.P.'s safety, protection, or physical or emotional well-being.

In view of the multiple factors adversely affecting N.T.'s ability to appropriately and safely parent R.P., we conclude there is substantial evidence to support the finding that return to the parent would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§ 366.21, subd. (f).) Thus the court did not err when it set a section 366.26 hearing to select and implement a permanency plan for R.P.

DISPOSITION

The petition is denied. The request for stay is denied.

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O'ROURKE, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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HALLER, J.